

Baker & Hostetler LLP

45 Rockefeller Plaza

New York, NY 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

Jimmy Fokas

Email: jfokas@bakerlaw.com

Kathryn M. Zunno

Email: kzunno@bakerlaw.com

Esterina Giuliani

Email: egiuliani@bakerlaw.com

*Attorneys for Plaintiff Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively
Consolidated SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L. Madoff,

Plaintiff,

v.

FRANK J. AVELLINO, *et al.*,

Defendants.

Adv. Pro. No. 08-01789 (SMB)
SIPA LIQUIDATION
(Substantively Consolidated)

Adv. Pro. No. 10-05421 (SMB)

**STIPULATION AND ORDER FOR SUBSTITUTION OF THE ESTATE OF
MICHAEL S. BIENES AND DIANNE K. BIENES, IN HER CAPACITY AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF MICHAEL S.
BIENES, IN PLACE OF DECEASED DEFENDANT MICHAEL S. BIENES**

WHEREAS, on December 10, 2010, Plaintiff Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.*, and the substantively consolidated estate of Bernard L. Madoff, individually, commenced this adversary proceeding (the “Adversary Proceeding”) against Michael S. Bienes, among other defendants, by filing his original complaint (ECF No. 1), which was amended on November 24, 2014 (ECF No. 86); and

WHEREAS, Michael S. Bienes died on April 5, 2017; and

WHEREAS, on June 15, 2017, the Court entered a Stipulation and Order extending the time to January 17, 2018, that the Trustee may move to substitute parties in the Adversary Proceeding to take the place of Michael S. Bienes, pursuant to Fed. R. Civ. P. 25(a) (ECF No. 162); and

WHEREAS, the Estate of Michael S. Bienes was opened in the Circuit Court for Broward County, Florida, Probate Division, File No. PRC170001678; and

WHEREAS, on October 18, 2017, Dianne K. Bienes was issued Letters of Administration as the duly appointed Personal Representative of the Estate of Michael S. Bienes.

IT IS THEREFORE MUTUALLY AGREED AND STIPULATED, by and between the Trustee and the Estate of Michael S. Bienes and Dianne K. Bienes, in her capacity as Personal Representative for the Estate of Michael S. Bienes, as follows:

1. The Estate of Michael S. Bienes and Dianne K. Bienes, in her capacity as Personal Representative of the Estate of Michael S. Bienes, are hereby substituted as defendants in place of Michael S. Bienes, deceased.

2. This Stipulation is intended by all parties hereto to be solely for the purpose of substituting the correct parties to comply with Fed. R. Civ. P. 25(a)(1) made applicable by Fed. R. Bankr. P. 7025. Except as expressly set forth herein, the parties to this Stipulation reserve all rights, claims and/or defenses they may have, and entry into this Stipulation shall not impair or otherwise affect any such rights, claims and/or defenses.

3. The Clerk of the Court is hereby directed to amend the caption to remove Michael S. Bienes and substitute the Estate of Michael S. Bienes and Dianne K. Bienes, in her capacity as Personal Representative of the Estate of Michael S. Bienes, as reflected on Exhibit A to this Stipulation. For the sake of clarity, Dianne K. Bienes remains a defendant in the Adversary Proceeding in her individual capacity.

4. This Stipulation may be signed by the parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the

same instrument. A signed facsimile, photostatic or electronic copy of this Stipulation shall be deemed an original.

Dated: November 16, 2017

BAKER & HOSTETLER LLP

By: /s/ Jimmy Fokas

45 Rockefeller Plaza

New York, New York 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

Jimmy Fokas

Email: jfokas@bakerlaw.com

Kathryn M. Zunno

Email: kzunno@bakerlaw.com

Esterina Giuliani

Email: egiuliani@bakerlaw.com

*Attorneys for Plaintiff Irving H. Picard, Trustee for
the Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the Estate of Bernard L. Madoff*

HAILE, SHAW & PFAFFENBERGER, P.A.

By: /s/ Gary A. Woodfield

Gary A. Woodfield

660 U.S. Highway One, Third Floor

North Palm Beach, FL 33408

Telephone: (561) 627-8100

Facsimile: (561) 622-7603

Email: gwoodfield@haileshaw.com

*Attorney for Defendants the Estate of Michael S.
Bienes, and Dianne K. Bienes, in her individual
capacity and her capacity as the Personal
Representative for the Estate of Michael S. Bienes*

SO ORDERED

/s/ STUART M. BERNSTEIN

HON. STUART M. BERNSTEIN

UNITED STATES BANKRUPTCY JUDGE

Dated: **November 16, 2017**

New York, New York

EXHIBIT "A"

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

FRANK J. AVELLINO, individually, and as
Trustee for FRANK J. AVELLINO REVOCABLE
TRUST NUMBER ONE AS AMENDED AND
RESTATED JANUARY 26, 1990, AS
AMENDED; FRANK J. AVELLINO GRANTOR
RETAINED ANNUITY TRUST UNDER
AGREEMENT DATED JUNE 24, 1992; FRANK
J. AVELLINO GRANTOR RETAINED
ANNUITY TRUST AGREEMENT NUMBER 2
UNDER AGREEMENT DATED JUNE 24, 1992;
FRANK J. AVELLINO REVOCABLE TRUST
NUMBER ONE UNDER THE DECLARATION
OF TRUST NUMBER ONE DATED JUNE 10,
1988, AS AMENDED; RACHEL ANNE
ROSENTHAL TRUST U/A DATED JUNE 29,
1990; RACHEL ANNE ROSENTHAL TRUST #3;
HEATHER CARROLL LOWLES TRUST U/A
DATED JUNE 29, 1990; TIFFANY JOY

Adv. Pro. No. 10-05421 (SMB)

LOWLES TRUST U/A DATED JUNE 29, 1990;
MELANIE ANN LOWLES TRUST U/A DATED
JUNE 29, 1990; TAYLOR ASHLEY MCEVOY
TRUST U/A DATED JUNE 24, 1992; MADISON
ALYSSA MCEVOY TRUST U/A DATED JUNE
29, 1990; S.A. GRANTOR RETAINED
ANNUITY TRUST; AVELLINO FAMILY
TRUST; AVELLINO & BIENES PENSION
PLAN & TRUST;

THE ESTATE OF MICHAEL S. BIENES;

NANCY C. AVELLINO, individually, and as
Trustee for NANCY CARROLL AVELLINO
REVOCABLE TRUST UNDER THE TRUST
AGREEMENT DATED MAY 18, 1992; RACHEL
ANNE ROSENTHAL TRUST U/A DATED JUNE
29, 1990; RACHEL ANNE ROSENTHAL TRUST
#3; HEATHER CARROLL LOWLES TRUST U/A
DATED JUNE 29, 1990; TIFFANY JOY
LOWLES TRUST U/A DATED JUNE 29, 1990;
MELANIE ANN LOWLES TRUST U/A DATED
JUNE 29, 1990; TAYLOR ASHLEY MCEVOY
TRUST U/A DATED JUNE 24, 1992; MADISON
ALYSSA MCEVOY TRUST U/A DATED JUNE
29, 1990;

DIANNE K. BIENES, individually, and as
Personal Representative for the ESTATE OF
MICHAEL BIENES;

THOMAS G. AVELLINO;

AVELLINO & BIENES; AVELLINO FAMILY
TRUST; AVELLINO & BIENES PENSION
PLAN & TRUST; GROSVENOR PARTNERS,
LTD.; MAYFAIR VENTURES, G.P.; ASTER
ASSOCIATES; ST. JAMES ASSOCIATES;
STRATTHAM PARTNERS; KENN JORDAN
ASSOCIATES; ASCENT, INC.; MAYFAIR
BOOKKEEPING SERVICES, INC.; 27 CLIFF,
LLC; THE AVELLINO FAMILY FOUNDATION,
INC.;

RACHEL A. ROSENTHAL; HEATHER C.
LOWLES; MELANIE A. LOWLES; A MINOR
WITH THE INITIALS S.A.; FRANK J.

AVELLINO REVOCABLE TRUST NUMBER ONE AS AMENDED AND RESTATED JANUARY 26, 1990, AS AMENDED; FRANK J. AVELLINO GRANTOR RETAINED ANNUITY TRUST UNDER AGREEMENT DATED JUNE 24, 1992; FRANK J. AVELLINO GRANTOR RETAINED ANNUITY TRUST AGREEMENT NUMBER 2 UNDER AGREEMENT DATED JUNE 24, 1992, AS AMENDED; FRANK J. AVELLINO REVOCABLE TRUST NUMBER ONE UNDER THE DECLARATION OF TRUST NUMBER ONE DATED JUNE 10, 1988, AS AMENDED; NANCY CARROLL AVELLINO REVOCABLE TRUST UNDER THE TRUST AGREEMENT DATED MAY 18, 1992; RACHEL ANNE ROSENTHAL TRUST U/A DATED JUNE 29, 1990; RACHEL ANNE ROSENTHAL TRUST #3; HEATHER CARROLL LOWLES TRUST U/A DATED JUNE 29, 1990; TIFFANY JOY LOWLES TRUST U/A DATED JUNE 29, 1990; MELANIE ANN LOWLES TRUST U/A DATED JUNE 29, 1990; TAYLOR ASHLEY MCEVOY TRUST U/A DATED JUNE 24, 1992; MADISON ALYSSA MCEVOY TRUST U/A DATED JUNE 29, 1990; S.A. GRANTOR RETAINED ANNUITY TRUST,

Defendants.